IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

Crl.Rev.Pet.No. 331 of 2000

CC.573/1997 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

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REVN. PETITIONER/COMPLAINANT:

INSPECTOR, EMPLOYEES STATE INSURANCE CORPORATION, THRISSUR.

BY ADV. SRI.T.P.M.IBRAHIM KHAN,SR.SC, RAILWAYS

RESPONDENT/ACCUSED:

GOPALARISHNAN PILLAI, SECRETARY,
M/S.CHATHANNUR HANDLOOM WEAVERS'
INDUSTRIAL CO-OPERATIVE SOCIETY
NO.493, CHATHANNUR, KOLLAM.

BY ADV. SMT.I.SHEELA DEVI.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.R.P.No. 331 of 2000

ORDER

The Inspector of Employees State Insurance Corporation, Thrissur, who is the complainant in C.C.No.573/97 on the file of the Judicial Fist Class Magistrate's Court-I, Thrissur, is the revision petitioner. He filed a complaint against the respondent herein stating that while he(the respondent) was the principal employer of the establishment known as M/s.Chathannur Handloom Weavers' Industrial Co-operative Society No.493, he had failed to pay the Employees State Insurance contribution for the period from 30.5.1982 onwards, whereas, the share of the employees for the contribution had already been deducted from the wages of the employees and thus, he committed offence under Section 85(a) of the Employees State Insurance Act. The learned Magistrate, vide order

impugned, has discharged the accused under Section 245(1) Cr.P.C. observing that on perusing the records and deposition of PWs 1 and 2, he is satisfied that there is no prima facie case to frame charge against the accused.

2. The case is one, which was originally filed as C.C.No.494/92. Later, it was transferred to the Register of long pending cases as L.P.35/93, as the accused was absconding. Subsequently on the accused surrendering before the court below, the case was re-registered assigning the present number as C.C. No.573/97. The proceedings paper in the case shows that charge framed against the accused was read over and explained to him, he was questioned and his plea was recorded. Thereafter, the accused is seen to have been questioned under Section 313 Cr.P.C., after closing the evidence of the prosecution, examining PWs 1 and 2 and marking Exhibits P1 to P12. The case was thereafter posted for defence evidence to 16.10.1999. It was on that

day that the learned Magistrate adjourned the case to verify whether charge has been framed or not. It is not clear from the proceedings paper as to whether charge was actually framed or not. However, even in case charge was omitted to be framed before questioning the accused regarding the charge and recording his plea, that by itself is no defect which vitiates the proceedings. The effect of omission to frame charge or absence of charge is dealt with under Section 464(1) Cr.P.C. The relevant portion reads as follows:

> "No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby."

In the instant case, the learned Magistrate should have proceeded to dispose of the matter on merits, even assuming that there was no charge framed, as the defence has no case that they were unaware of the charges levelled against them. The order of discharge passed by the learned Magistrate holding that there is no material to frame charge is, in the circumstances, irregular and illegal and deserves to be set aside.

3. The case is one where the accused had already been questioned under Section 313 Cr.P.C., on the prosecution closing their evidence. The accused is seen to have stated, when questioned under Section 313 Cr.P.C., that he has got evidence to be adduced in defence. But, no evidence is seen adduced, as it was at that stage that the learned Magistrate directed to verify as to whether charge had been framed or not. Consequently, therefore, the case has to proceed afresh from the stage of defence evidence.

In the result, allowing this revision, I set aside the order impugned and remit the case back to the trial court to proceed from the stage of defence evidence. Respondent shall be at liberty to produce such evidence in defence, as he chooses. On completion of the defence evidence, if any, the learned Magistrate shall dispose of the case afresh, in accordance with law.

17th January, 2007 (K.P.Balachandran, Judge)

tkv

K.P.balachandran, J.

Crl.R.P.No.331 of 2000

ORDER

17th January, 2007